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FAX MESSAGE

FAX #1

Send To:

Name: Examiner Michele Flood

FAX Number: 703-746-5245

Firm: US Patent Office

Telephone Number: 703-308-9432

FAX #2

Send To:

Name:

FAX Number: 703-872-9306

Firm: US Patent Office

Telephone Number:

Name: Gregory T. Lowen, Ph.D.

Floor: 3

Operator Sending:

Telephone Number: 202-739-5915

Time Sent:

Date Sent: December 12, 2003

Number of Pages (including cover page): 6

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Re: U.S. Patent Application No.: 09/891,615  
Title: EXTRACTS, COMPOUNDS AND PHARMACEUTICAL COMPOSITIONS HAVING DIABETIC ACTIVITY  
Inventor: Ian Duncan RUBIN et al.  
Our Reference: 060616-5003 US (formerly 013306-08-5003 US)

Dear Examiner Flood:

Per our telephone conversation today, I am faxing you a courtesy copy of a response that we filed on May 29, 2003. I am also faxing a copy of the stamped verification that the response was received by the Patent Office on that date. Please don't hesitate to call me with any questions.

Regards,



Gregory T. Lowen (Reg. No. 46,882)

**PLEASE STAMP AND RETURN TO SHOW RECEIPT OF:**

U.S. Patent Application of: Ian Duncan RUBIN *et al.*  
Application No.: 09/891,615 Group Art Unit: 1654  
Filed: June 27, 2001 Examiner: Michele C. Flood  
For: *Extracts, Compounds And Pharmaceutical  
Compositions Having Anti-Diabetic Activity  
And Their Use*

- 1: Transmittal Form
2. Response to Notice of Non-Responsiveness to Restriction/Election Requirement

Dated: May 29, 2003  
Attorney Docket No.: 013306-08-5003 US  
GTL/dmb

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PATENT

ATTORNEY DOCKET NO. 013306-08-5003 US

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ian Duncan RUBIN *et al.*

Application No.: 09/891,615

Filed: June 27, 2001

For: *Extracts, Compounds And  
Pharmaceutical Compositions Having  
Anti-Diabetic Activity And Their Use*

Group Art Unit: 1654

Examiner: Michele C. Flood

DEC 12 2003

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

**RESPONSE TO NOTICE OF NON-RESPONSIVENESS TO RESTRICTION/ELECTION  
REQUIREMENT TRANSMITTAL FORM**

1. Transmitted herewith is a response to the Restriction Requirement dated May 5, 2003.
2. Additional papers enclosed:

- Information Disclosure Statement  
 Form PTO-1449  
 Citations

**3. Extension of Time**

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136(a) apply.

- Applicant believes that no extension of time is required.  
 Applicant petitions for an extension of time, the fees for which are set out in 37 CFR § 1.17(a), for the total number of months checked below:

Total Months <u>Requested</u>	Fee for <u>Extension</u>	[Fee for Small Entity]
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 390.00	\$195.00
<input type="checkbox"/> three months	\$ 890.00	\$445.00

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(FBI) 12.12.03 15:11/ST. 15:10/NO. 3560278998 P 3

FROM

Attorney Docket No. 013306-08-5003-US

Application No. 09/891,615

Page 2 of 3

[ ] four months \$1,390.00 \$695.00

If an additional extension of time is required, please consider this a Petition therefor.

[ ] An extension for \_\_\_ months has already been secured and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

4. Constructive Petition

[X] EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).

5. Fee Payment

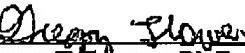
- [ ] The Commissioner is hereby authorized to charge any additional extension of time or additional claim fees due to Deposit Account No. 50-0310.
- [ ] The Commissioner is hereby authorized to charge for any additional fees which may be required, including fees due under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account 50-0310.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: May 29, 2003

By:

  
Gregory T. Lowen, Ph.D.  
Reg. No. 46,882

CUSTOMER NO. 09629

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ATTORNEY DOCKET NO.: 013306-08-5003

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*In re application of:* )  
Ian Duncan RUBIN *et al.* )  
Application No.: 09/891,615 ) Group Art Unit: 1654  
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PHARMACEUTICAL COMPOSITIONS )  
HAVING ANTI-DIABETIC ACTIVITY )  
AND THEIR USE )

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTICE OF NON-RESPONSIVENESS TO  
RESTRICTION/ELECTION REQUIREMENT

Applicants received a notice mailed May 5, 2003 indicating that Applicants' filed response of March 28, 2003 with regard to an election/restriction requirement was deemed non-responsive because no species election had been made between the plant genus *Trichocaulon* and the plant genus *Hoodia*. Applicants elect, without traverse, the species of the plant genus *Hoodia* and identify claims 1-12, 25, 29-30, 32 and 34 as encompassing the elected species *Hoodia*. Because this response is being filed within the statutorily designated period of one month, Applicants believe that no extension of time fee is required.

REMARKS

On March 28, 2003, Applicants responded to a Restriction Requirement mailed on November 29, 2002 which stated that the application contained claims directed to "the following patentably distinct species of the claimed invention: the distinct ingredients of claim 1, namely an extract of the genus *Trichocaulon* or the genus *Hoodia*." Applicants were required to elect a